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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-773

Filed: 15 September 2020

Forsyth County No. 16 CVD 4374

ELLEN MARIA ROTHFUSS, Plaintiff,

v.

MICHAEL BRANDON LINEBERRY, Defendant.

Appeal by Defendant from orders entered 12 September 2017 and 14 February 2019 by Judge Camille Banks-Prince in Forsyth County District Court. Heard in the Court of Appeals 1 April 2020.

Fox Rothschild LLP, by Michelle D. Connell, and Wyrick Robbins Yates & Ponton LLP, by K. Edward Greene, for plaintiff-appellee.

Mercedes O. Chut for defendant-appellant.

MURPHY, Judge.

In a custody and support action, a trial court meets the statutory requirements for awarding attorney fees—specifically, findings regarding good faith and insufficient means to defray the expense of the suit—when it makes supported findings that the party awarded fees was receiving support payments substantially below the support guidelines, requested an increase in the payments, the obligor

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rejected that request, and the party awarded fees incurred attorney fees significantly exceeding her monthly gross income.

Upon making the appropriate statutory findings regarding good faith and insufficient means, a trial court does not abuse its discretion in determining the reasonable amount of attorney fees when its findings are supported by the direct relation of the rendered legal services to the issues of child support, the attorney's experience and qualifications in the practice of law, the reasonableness of the rates and fees in light of the attorney's training and experience, and the rates charged by other attorneys with similar experience practicing near that attorney.

A trial court does not err in awarding attorney fees incurred by a party in bringing a civil contempt motion when the motion is resolved by the nonmoving party's agreement to pay the child support arrears at issue in the motion.

BACKGROUND

This appeal arises out of a child custody and support dispute between Ellen Maria Rothfuss ("Mother"), Plaintiff, and Michael Brandon Lineberry ("Father"), Defendant. Mother and Father dated, but never married, and are the biological parents of a minor child. After their dating relationship ended, Mother and Father executed a *Parental Responsibility, Rights, and Custody Agreement* ("the Parenting Agreement") on 6 March 2015, which required Father to pay child support of \$320.00 per month and provided for visitation and custody arrangements. Mother had

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primary physical custody of the minor child, and Father had visitation every other weekend, with additional visitation on holidays. He also had visitation on alternating Wednesdays, but he did not exercise that visitation privilege.

After the parties signed the Parenting Agreement, Father obtained a different job where his yearly income increased from approximately \$45,000.00 to approximately \$80,000.00. When his income increased, Father approached Mother about modifying the Parenting Agreement to increase his child support payments in exchange for a new custody arrangement of “three weekends every other month, and week on, week off during the summer.” Father voluntarily increased his child support payments for a short period of time.

When the parties did not agree on the visitation schedule, Father changed his child support payments back to “what was in the [Parenting Agreement].” Mother filed suit on 20 July 2016 for custody of the minor child and “reasonable child support.”

On 12 September 2017, the trial court entered its *Order re: Custody and Support* (“the 12 September 2017 Order”) and awarded primary physical custody and increased child support payments to Mother. The trial court also found “[Mother] is entitled to attorney fees pursuant to [N.C.G.S. §] 50-13.6[.]” However, the trial court delayed its decision on an attorney fees amount until a later hearing where it would

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“review [Mother’s] attorneys’ affidavit and after allowing [Father’s] counsel an opportunity to be heard[.]”

Mother and Father filed several subsequent affidavits, motions, and responses. Of note, Mother filed a 19 October 2017 *Motion for Contempt* to collect child support arrears after the 12 September 2017 Order. The *Motion for Contempt* was resolved via a consent child support order at a hearing on 26 April 2018 regarding the unresolved attorney fees issue when “the parties . . . agreed to . . . [a] payment plan regarding the arrears balance.”

After reviewing the 12 September 2017 Order and affidavits from both parties, considering the motions and responses, and conducting a hearing on 26 April 2018, the trial court awarded attorney fees to Mother in a 14 February 2019 order (“the 14 February 2019 Fees Order”). The 14 February 2019 Fees Order awarded attorney fees for two phases of the proceedings—Mother’s attorney fees incurred in relation to the 12 September 2017 Order, and her attorney fees incurred in relation to the 26 April 2018 hearing, including the *Motion for Contempt*. Father appeals and argues (1) the trial court did not include sufficient findings to satisfy the statutory requirement for awarding attorney fees to Mother, and (2) competent evidence does not support the findings, in both the 12 September 2017 Order and the 14 February 2019 Fees Order.

ANALYSIS

A. Attorney Fees

1. Standard of Review

While “[w]e typically review an award of attorney[] fees under N.C.[G.S.] § 50-13.6 (2016) for abuse of discretion[,] . . . when reviewing whether the statutory requirements under [N.C.G.S. §] 50-13.6 are satisfied, we review *de novo*.” *Sarno v. Sarno*, 255 N.C. App. 543, 548, 804 S.E.2d 819, 824 (2017). If we determine that the statutory “requirements have been met[,] the standard of review change[s] to abuse of discretion for an examination of the amount of attorney[] fees awarded.” *Sarno*, 255 N.C. App. at 548, 804 S.E.2d at 824.

“[T]he trial court’s findings of fact must be supported by competent evidence.” *Conklin v. Conklin*, 264 N.C. App. 142, 144, 825 S.E.2d 678, 680 (2019). Further, the trial court’s “findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *State v. Brewington*, 352 N.C. 489, 498, 532 S.E.2d 496, 501 (2000) (internal quotation marks omitted).

2. Statutory Requirements

N.C.G.S. § 50-13.6 provides:

In an action or proceeding for the *custody or support, or both, of a minor child*, including a motion in the cause for the modification or revocation of an existing order for custody or support, or both, the court may in its discretion order payment of reasonable attorney[] fees to *an interested party acting in good faith* who has *insufficient means to defray the expense of the suit*. Before ordering payment of a fee *in a support action*, the court must find as a fact that

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the party ordered to furnish support has refused to provide support which is adequate under the circumstances existing at the time of the institution of the action or proceeding; provided however, should the court find as a fact that the supporting party has initiated a frivolous action or proceeding the court may order payment of reasonable attorney[] fees to an interested party as deemed appropriate under the circumstances.

N.C.G.S. § 50-13.6 (2019) (emphasis added).

In order to satisfy the N.C.G.S. § 50-13.6 requirements for awarding attorney fees in a custody and support action, “[t]he facts required by the statute must be alleged and proved” to support the order, namely that the interested party “is (1) acting in good faith and (2) has insufficient means to defray the expense of the suit.” *Hudson v. Hudson*, 299 N.C. 465, 472, 263 S.E.2d 719, 723-24 (1980). However, if “the action is *solely* one for support,” the trial court must also make “an additional finding of fact ‘that the party ordered to furnish support has refused to provide support which is adequate under the circumstances existing at the time of the institution of the action or proceeding.’” *Hudson*, 299 N.C. at 472-73, 263 S.E.2d at 724 (quoting N.C.G.S. § 50-13.6).

Since the 12 September 2017 Order was not an action solely for support, “[t]he facts required by [N.C.G.S. § 50-13.6 regarding Mother’s acting in good faith and insufficient means to defray the expense of the suit] must be alleged and proved to support an order for attorney[] fees.” *Hudson*, 299 N.C. at 472, 263 S.E.2d at 723 (alterations omitted); *see also Sarno*, 255 N.C. App. at 553, 804 S.E.2d at 827. Despite

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the trial court's provision that the 14 February 2019 Fees Order was "as to the issue of child support only[.]" the issue originated from the 12 September 2017 Order, which involved custody and support. If the trial court made findings of fact regarding the good faith and insufficient means statutory elements, and competent evidence supported those findings, the attorney fees award to Mother was appropriate. N.C.G.S. § 50-13.6 (2019); *see also Hudson*, 299 N.C. at 472-73, 263 S.E.2d at 723-24.

Despite admitting in his answer to Mother's complaint "that the minor child is entitled to support . . . [and] that the parties should pay support for the minor child as determined by the [North Carolina Child Support] Guidelines[.]" Father argues that the trial court made "erroneous, inadequate findings and conclusions" in the 12 September 2017 Order, as well as in the 14 February 2019 Fees Order, such that the findings did not support an attorney fees award.

a. Good Faith

In determining good faith under N.C.G.S. § 50-13.6, the trial court is "in the best position to evaluate the merits and sincerity of the claims of both parties and to determine whether [the party] was acting in good faith." *Conklin*, 264 N.C. App. at 149, 825 S.E.2d at 682-83. The presence of good faith is tied to the presence of a *genuine dispute* between the parties. *Id.* at 145, 149, 825 S.E.2d at 680, 683; *see also Setzler v. Setzler*, 244 N.C. App. 465, 467, 781 S.E.2d 64, 66 (2015) ("Because the element of good faith is seldom in issue a party satisfies it by demonstrating that he

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or she seeks custody in a genuine dispute with the other party.”) (internal marks and alterations omitted).

Here, in addition to findings of fact concerning child custody and support, the trial court made Finding of Fact 27 in the 12 September 2017 Order:

27. The Court finds that [Mother] is entitled to attorney fees pursuant to [N.C.G.S. §] 50-13.6 because [Father] was paying child support *substantially below the guidelines* at the time [Mother] filed her action. Prior to [Mother] filing her lawsuit, she had *requested an increase in child support* and [Father] *did not comply* with that request and this led to [Mother] filing her lawsuit seeking child support. In addition, the Court finds that since filing, [Father] did not voluntarily increase his child support after the filing of the action. The Court will review [Mother’s] attorneys’ affidavit and after allowing [Father’s] counsel an opportunity to be heard, enter a subsequent order as to the amount of attorney fees awarded for [Father’s] failure to pay adequate support at the time of the filing of the lawsuit.

(Emphasis added).

The trial court also included what it labeled as Conclusion of Law 12 in the 12 September 2017 Order:

12. The Plaintiff is an interested party acting in *good faith with insufficient means to defray the expense of this suit, including attorney fees*, and Defendant should be required to pay all or a portion of the expense of this suit, including attorney fees.

(Emphasis added).

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In its 14 February 2019 Fees Order, the trial court “incorporate[d] all findings and conclusions from its [12 September 2017] Order” and included Finding of Fact 4 as follows:

4. The Court finds that [Mother] is an interested party *who is acting in good faith* as it relates to [Mother’s] claims [Mother] is also an injured party, as she was receiving an amount in child support that was *[less than one-third of] the guideline amount* when she filed her action. It is undisputed that [Mother] *sought more child support prior to filing* the lawsuit and that [Father] *refused to comply* with her request. The guideline amount is more than three times what [Father] was paying. Therefore, [Mother] *was acting in good faith when she filed this action*.

(Emphasis added).

The trial court also included what it labeled as Conclusion of Law 2 in its 14 February 2019 Fees Order as follows:

2. [Mother] is an interested party, *who has acted in good faith*. [Mother] has insufficient means with which to defray the costs, including attorney fees in both the prosecution of her claims and motions and the defense of her claims and motions.

(Emphasis added).

As a preliminary matter, we are not persuaded by Father’s argument that the Parenting Agreement should have determined his child support obligation rather than the statutory guidelines. The trial court found Father’s child support obligation under the Parenting Agreement was inadequate to meet the minor child’s needs, and

the trial court considered competent evidence of the inadequacy of Father's payment amount under the Parenting Agreement.

Assuming, *arguendo*, the trial court's explicit finding in its 14 February 2019 Fees Order of Mother's good faith is not sufficient to meet the statutory requirement, as well as its explicit conclusions in both the 12 September 2017 Order and the 14 February 2019 Fees Order that Mother acted in good faith, we have found good faith despite "the trial court [not making] any findings or conclusions as to [the prevailing party's] good faith [when] evidence shows that [the party] is an interested party acting in good faith." *Lawrence v. Tise*, 107 N.C. App. 140, 153, 419 S.E.2d 176, 185 (1992). Undisputed evidence of good faith can overcome a trial court's failure to make an explicit finding of good faith. *Cobb v. Cobb*, 79 N.C. App. 592, 597, 339 S.E.2d 825, 829 (1986). In Finding of Fact 27 of the 12 September 2017 Order, the trial court found Mother and Father were disputing Father's payments that were substantially below the guidelines—a genuine dispute. In Finding of Fact 4 in its 14 February 2019 Fees Order, the trial court found "[i]t is undisputed that [Mother] sought more child support prior to filing the lawsuit and that [Father] refused to comply with her request." Applying *Conklin*, where the presence of good faith is tied to the presence of a genuine dispute between the parties, Mother meets the first element in N.C.G.S. § 50-13.6 of good faith since competent evidence supports the related findings and the

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trial court made sufficient findings regarding good faith in both orders at issue. *Conklin*, 264 N.C. App. at 144-45, 825 S.E.2d at 680-81.

In making the findings regarding Mother's good faith, specifically that a genuine dispute existed between Mother and Father, the trial court considered the following competent evidence: Mother testified that she and Father discussed increasing the child support payments when Father's yearly income increased from approximately \$45,000.00 to approximately \$80,000.00; Mother submitted an affidavit supporting the inadequacy of Father's payments under the Parenting Agreement; and Father acknowledged he refused to increase his child support payments upon the change in jobs and increase in income—he claimed he was unable to pay more than \$320.00 per month while making \$80,000.00 per year, and he decided not to increase the payment amount “until [the parties] got [custody] sorted out.” Additionally, Father admitted multiple times in his answer to the complaint that the Guidelines should determine the amount of child support. The trial court also received Exhibits 1 and 2, which were proposed worksheets including child support calculations according to the North Carolina Child Support Guidelines; Father's payments were less than one-third of the guideline amount.

The trial court noted “[Father] was paying an amount in support (of \$320[.00] per month) that was grossly below the child support guidelines (of \$1,081[.00] per month) and refused to provide adequate support prior to the filing of the lawsuit.”

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Regardless of subsequent consent orders or withdrawal of motions for contempt, we are interested in “the history of the litigation . . . in this case” in determining whether a genuine dispute existed in relation to a party acting in good faith according to the statute. *See Conklin*, 264 N.C. App. at 145, 825 S.E.2d at 681. The trial court’s findings note that a genuine dispute existed from Mother’s perspective, and these findings were supported by competent evidence.

The trial court was presented with evidence Mother engaged in a genuine dispute with Father concerning child support and custody, and made corresponding findings noting that dispute. The trial court properly found, as required by statute, Mother was an interested party acting in good faith, and competent evidence supported that finding of Mother’s good faith.

b. Insufficient Means to Defray the Expense of the Suit

In addition to Finding of Fact 27 noted above, the trial court made Finding of Fact 24 in the 12 September 2017 Order, which included the following:

24. The Court finds from the information contained in [Mother’s] Exhibit No. 3, Worksheet 5, that from the filing of the complaint through the month of July of 2017, *[Mother’s] gross monthly income was \$3,119.76 and [Father’s] gross monthly income was \$7,170.51. . . . [T]he Court finds that [Father] owes [Mother] the sum of \$5,730.24 for unpaid child support between August 1, 2016 and July 31, 2017.*

(Emphasis added). The trial court also considered Mother’s affidavit that her household expenses significantly exceeded her monthly net income.

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The trial court also included what it labeled as Conclusion of Law 12 in the 12 September 2017 Order:

12. [Mother] is an interested party acting in good faith *with insufficient means to defray the expense of this suit, including attorney fees*, and [Father] should be required to pay all or a portion of the expense of this suit, including attorney fees.

(Emphasis added).

In its 14 February 2019 Fees Order, the trial court “incorporate[d] all findings and conclusions from its [12 September 2017] Order” and included Finding of Fact 6 as follows:

6. [Father] was paying an amount in support (of \$320[.00] per month) that was *grossly below* the child support guidelines (of \$1,081[.00] per month) and refused to provide adequate support prior to the filing of the lawsuit. . . . [Mother’s] attorney[] fees of \$12,300.00 at the initial hearing was *nearly four times her gross monthly income*. Due to [Father’s] refusal to pay the guideline amount, [Mother] had to assume the majority of the financial responsibility for the shared monthly basic child support obligation of \$1[,]131.81, which was a substantial amount of her monthly income. . . . *Regardless, [Mother’s] attorney[] fees far exceed her ability to pay based upon her income and reasonable expenses; therefore, the Court finds that she has insufficient means to defray the cost of litigation.*

(Emphasis added).

The trial court also included what it labeled as Conclusion of Law 2 in its 14 February 2019 Fees Order as follows:

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2. [Mother] is an interested party, who has acted in good faith. [Mother] has *insufficient means with which to defray the costs*, including attorney fees in both the prosecution of her claims and motions and the defense of her claims and motions.

(Emphasis added).

“[A] large disparity in the income between” the parties is a factor that can support the trial court making a finding that the party seeking attorney fees has insufficient means to defray the expense of the suit. *Conklin*, 264 N.C. App. at 150, 825 S.E.2d at 683-84. In *Conklin*, the trial court considered evidence that the father made significantly more annual income than the mother, who made \$40,000.00 per year, and the mother had little savings. *Id.* at 150-51, 825 S.E.2d at 683-84. The mother’s attorney fees were significantly more than her income could support. *Id.* We affirmed the trial court’s finding that insufficient means existed for the mother to defray the expense of the suit, which supported an award of attorney fees to the mother. *Id.*

According to the trial court’s findings in the 12 September 2017 Order, Father’s gross income was \$7,170.51 per month, compared to Mother’s gross income of \$3,119.76 per month. The trial court found Father changed jobs between the 12 September 2017 Order and the 14 February 2019 Fees Order, and Father’s gross income increased from \$7,170.50 per month to \$8,750.02 per month. The trial court’s Finding of Fact 6 in its 14 February 2019 Fees Order explicitly stated Mother had insufficient means to defray the cost of litigation.

In making the findings regarding Mother lacking sufficient means to defray the expense of the suit, the trial court considered the following competent evidence: Mother testified her income was \$18.00 per hour, and she typically worked a 40-hour week; Mother also testified Father did not increase the child support amount from \$320.00, despite his yearly income increasing from approximately \$45,000.00 to approximately \$80,000.00, and stated those child support payments went “to [the child’s] expenses[]”—the low amount of the support payments meant Mother did not “have the ability to put any – like, [save] for his education or anything going forward”; the trial court also examined proposed worksheets, affidavits of income and expenses from Father, and corresponding testimony regarding those worksheets that itemized Father’s income as substantially more than Mother’s; the trial court received an affidavit from Mother concerning her income and expenses; the monthly expenses of \$3,920.00 exceeded her monthly gross income of \$3,120.00 and average monthly net income of \$2,375.00; and Mother’s attorney submitted affidavits of his fees, which totaled \$12,300.00.

The trial court properly found, as required by statute, Mother had insufficient means to defray the expense of the suit, and competent evidence supported that finding of insufficient means.

3. Reasonableness of the Amount of Attorney Fees Awarded

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Father also contends the trial court did not award a reasonable amount of attorney fees.

If we determine the statutory “requirements have been met[,] the standard of review change[s] to abuse of discretion for an examination of the amount of attorney[] fees awarded.” *Sarno*, 255 N.C. App. at 548, 804 S.E.2d at 824. “It is well settled that the amount of attorney[] fees is within the trial court’s discretion and is reviewed for an abuse of discretion.” *Conklin*, 264 N.C. App. at 151, 825 S.E.2d at 684. A trial court abuses its discretion when “the judgment was unsupported by reason and could not have been a result of competent inquiry.” *Sarno*, 255 N.C. App. at 548, 804 S.E.2d at 824 (quoting *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992)). The award of attorney fees must be reasonable, which requires “findings of fact upon which a determination of the requisite reasonableness can be based, such as findings regarding the nature and scope of the legal services rendered, the skill and time required, the attorney’s hourly rate, and its reasonableness in comparison with that of other lawyers.” *Cobb*, 79 N.C. App. at 595, 339 S.E.2d at 828.

The trial court made those necessary findings in Findings of Fact 11 and 12 in the 14 February 2019 Fees Order as follows:

11. [Mother’s] attorney submitted an affidavit for attorney fees related to the [applicable] motions and countermotions[.] The affidavit indicated that [Mother’s] attorney had spent 36.50 hours on the above motions and [Mother’s] attorney [] is a Board Certified Specialist in Family Law and has practiced

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Family Law in Forsyth County for more than thirty years and the attorney's hourly rate was \$300.00 an hour.

12. The Court reviewed additional detailed billing records and the affidavit of attorney[] fees from [Mother's] attorney and has determined that the time that [Mother's attorney] expended in the matter was reasonable, the nature of his services were directly related to the issues of child support and that [Mother's attorney] has in excess of thirty years of experience in the practice of law. Further, he is a board certified specialist in the area of family law and his rates and fees are normal and reasonable in light of his training and experience and the rates charged by other attorneys with similar experience in Forsyth County.

These findings of fact tracked the requirements in *Cobb* and noted the nature and scope of Mother's attorney's legal services rendered, which were directly related to child custody and support issues, the skill and time required, by reviewing the billing records submitted and noting the qualifications and experience of Mother's attorney, the attorney's hourly rate, which the court noted was \$300.00 per hour, and the hourly rate's reasonableness in comparison with that of other lawyers, as the trial court took judicial notice¹ of what attorneys with similar experience in Forsyth County charge in child custody and support matters, and found that Mother's

¹ According to *Simpson v. Simpson*, "a [D]istrict [C]ourt, considering a motion for attorney[] fees under N.C.[G.S.] § 50-13.6, is permitted, although not required, to take judicial notice of the customary hourly rates of local attorneys performing the same services and having the same experience." *Simpson v. Simpson*, 209 N.C. App. 320, 328, 703 S.E.2d 890, 895 (2011).

attorney's hourly rate was "normal and reasonable." These records were included in the Record and reviewed by the trial court.

In light of the trial court's findings of fact in the 14 February 2019 Fees Order "regarding the nature and scope of the legal services rendered, the skill and time required, the attorney's hourly rate, and its reasonableness in comparison with that of other lawyers," which were supported by competent evidence, the trial court did not abuse its discretion in determining the amount of the attorney fees. *Cobb*, 79 N.C. App. at 595, 339 S.E.2d at 828.

4. *Ruth v. Ruth* Exception for Motions for Contempt and Attorney Fees

Father also argues the trial court's award of attorney fees associated with Mother's 19 October 2017 *Motion for Contempt*, which the trial court dismissed as a result of the 26 April 2018 child support order by agreement of Mother and Father, is erroneous.

As a preliminary matter, the trial court's 14 February 2019 Fees Order contained a typographical error in Finding of Fact 14. In the last sentence of Finding of Fact 14, the trial court found "[u]ltimately, [Mother] was able to obtain relief through the entry of the order entered (by consent) on [21 April 2018]." No order was entered by consent on 21 April 2018. However, the trial court referenced the 26 April 2018 consent child support order earlier in Finding of Fact 14. Further, Finding of Fact 14 references Finding of Fact 9, which discussed the 26 April 2018 child support

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order. Instead of reading the trial court’s last sentence in Finding of Fact 14 as referring to a nonexistent 21 April 2018 consent order, we acknowledge the typographical error and read the last sentence of Finding of Fact 14 as intended: “Ultimately, [Mother] was able to obtain relief through the entry of the order entered (by consent) on [26 April 2018].” See *4000 Piedmont Parkway Assoc., LLC v. Eastwood Construction Co., Inc.*, 838 S.E.2d 694, *1 (N.C. Ct. App. 2020) (unpublished) (noting “the inclusion of the word [in the lease’s option provision] was a typographical error[.] . . . The provision ma[de] no sense with the [typographical error]” and we read the provision in the intended manner).²

In Finding of Fact 14, the trial court relied on *Ruth v. Ruth*, 158 N.C. App. 123, 579 S.E.2d 909 (2003) in determining that awarding attorney fees related to the 26 April 2018 consent child support order was correct. In *Ruth*, we held:

As a general rule, attorney[] fees in a civil contempt action are not available unless the moving party prevails. Nonetheless, in the limited situation where contempt fails because the alleged contemnor complies with the previous orders after the motion to show cause is issued and prior to the contempt hearing, an award of attorney[] fees is proper.

Ruth, 158 N.C. App. at 127, 579 S.E.2d at 912 (quoting *Reynolds v. Reynolds*, 147 N.C. App. 566, 575, 557 S.E.2d 126, 132 (2001)).

² Although *4000 Piedmont Parkway Associates, LLC* “is an unpublished opinion and is not controlling legal authority, N.C. R. App. P. 30(e)(3), we find its reasoning persuasive and we hereby adopt it.” *State v. Gardner*, 227 N.C. App. 364, 368, 742 S.E.2d 352, 355 (2013).

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Here, Mother did not prevail in her 19 October 2017 *Motion for Contempt*, as the parties resolved the matter via the 26 April 2018 consent child support order. Under typical circumstances, Mother would not prevail in a motion for attorney fees accumulated in the civil contempt action, but the exception in *Ruth* applies. Mother's *Motion for Contempt* arose out of Father's nonpayment of child support as required by the 12 September 2017 Order. After the 19 October 2017 *Motion for Contempt*, "the parties . . . agreed to . . . [a] payment plan regarding the arrears balance[.]" The alleged contemnor—Father—complied with the previous 12 September 2017 Order by entering into the consent order.

The payment plan constituted "the alleged contemnor compl[ying] with the previous orders after the motion to show cause is issued and prior to the contempt hearing," and the exception in *Ruth* applies. *Ruth*, 158 N.C. App. at 127, 579 S.E.2d at 912. The trial court did not abuse its discretion when it awarded attorney fees to Mother for her attorney's charged fees in pursuing the *Motion for Contempt*.

CONCLUSION

The trial court met the statutory requirements to award attorney fees in a custody and support action when it made findings, supported by competent evidence, regarding Mother acting in good faith and having insufficient means to defray the expense of the suit.

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The trial court properly determined a reasonable amount of attorney fees to award to Mother when it noted and considered the nature and scope of legal services rendered by Mother's attorney, the skill and time required, the attorney's hourly rate, and the hourly rate's reasonableness in comparison with that of other lawyers.

When Mother brought a civil contempt motion against Father, the trial court did not err in awarding attorney fees to Mother when the motion was resolved by Father's agreement to pay the fees at issue in the motion.

AFFIRMED.

Judges COLLINS and YOUNG concur.

Report per Rule 30(e).